

Part 5

Domestic Violence or Child Abuse - Insurance Practices

31A-21-501 Definitions.

For purposes of this part:

- (1) "Applicant" means:
 - (a) in the case of an individual life or accident and health policy, the person who seeks to contract for insurance benefits; or
 - (b) in the case of a group life or accident and health policy, the proposed certificate holder.
- (2) "Cohabitant" means an emancipated individual pursuant to Section 15-2-1 or an individual who is 16 years of age or older who:
 - (a) is or was a spouse of the other party;
 - (b) is or was living as if a spouse of the other party;
 - (c) is related by blood or marriage to the other party;
 - (d) has one or more children in common with the other party; or
 - (e) resides or has resided in the same residence as the other party.
- (3) "Child abuse" means the commission or attempt to commit against a child a criminal offense described in:
 - (a) Title 76, Chapter 5, Part 1, Assault and Related Offenses;
 - (b) Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (c) Section 76-9-702, Lewdness;
 - (d) Section 76-9-702.1, Sexual battery; or
 - (e) Section 76-9-702.5, Lewdness involving a child.
- (4) "Domestic violence" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt, conspiracy, or solicitation to commit a criminal offense involving violence or physical harm, when committed by one cohabitant against another and includes commission or attempt to commit, any of the following offenses by one cohabitant against another:
 - (a) aggravated assault, as described in Section 76-5-103;
 - (b) assault, as described in Section 76-5-102;
 - (c) criminal homicide, as described in Section 76-5-201;
 - (d) harassment, as described in Section 76-5-106;
 - (e) electronic communication harassment, as described in Section 76-9-201;
 - (f) kidnaping, child kidnaping, or aggravated kidnaping, as described in Sections 76-5-301, 76-5-301.1, and 76-5-302;
 - (g) mayhem, as described in Section 76-5-105;
 - (h) sexual offenses, as described in Title 76, Chapter 5, Part 4, Sexual Offenses, and Section 76-5b-201;
 - (i) stalking, as described in Section 76-5-106.5;
 - (j) unlawful detention or unlawful detention of a minor, as described in Section 76-5-304;
 - (k) violation of a protective order or ex parte protective order, as described in Section 76-5-108;
 - (l) any offense against property described in Title 76, Chapter 6, Part 1, Property Destruction, Part 2, Burglary and Criminal Trespass, or Part 3, Robbery;
 - (m) possession of a deadly weapon with intent to assault, as described in Section 76-10-507; or
 - (n) discharge of a firearm from a vehicle, near a highway, or in the direction of any person, building, or vehicle, as described in Section 76-10-508.

- (5) "Subject of domestic abuse" means an individual who is, has been, may currently be, or may have been subject to domestic violence or child abuse.

Amended by Chapter 39, 2012 General Session
Amended by Chapter 303, 2012 General Session

31A-21-502 Scope of part.

This part applies to only life and accident and health insurance.

Amended by Chapter 116, 2001 General Session

31A-21-503 Discrimination based on domestic violence or child abuse prohibited.

- (1) Except as provided in Subsection (2), an insurer of life or accident and health insurance may not consider whether an insured or applicant is the subject of domestic abuse as a factor to:
- (a) refuse to insure the applicant;
 - (b) refuse to continue to insure the insured;
 - (c) refuse to renew or reissue a policy to insure the insured or applicant;
 - (d) limit the amount, extent, or kind of coverage available to the insured or applicant;
 - (e) charge a different rate for coverage to the insured or applicant;
 - (f) exclude or limit benefits or coverage under an insurance policy or contract for losses incurred;
 - (g) deny a claim; or
 - (h) terminate coverage or fail to provide conversion privileges in violation of Section 31A-22-612 under a group accident and health policy for the insured because the coverage was issued in the name of the perpetrator of the domestic violence or abuse.
- (2)
- (a) Notwithstanding Subsection (1), an insurer may underwrite on the basis of the physical or mental condition of an insured or applicant if the underwriting is on the basis of a determination that there is a correlation between the medical or mental condition and a material increase in insurance risk.
 - (b) For purposes of Subsection (2)(a), the fact that an insured or applicant is a subject of domestic abuse is not a mental or physical condition.
 - (c) The determination required by Subsection (2)(a) shall be made in conformance with sound actuarial principles.
 - (d) Within 30 days after receiving an oral or written request from an insured or applicant, an insurer shall disclose in writing:
 - (i) the basis of an action permitted under Subsection (2)(a); and
 - (ii) if the policy has been issued or modified, the extent the action taken will impact the amount, extent, or kind of coverage or benefits available to the insured.

Amended by Chapter 319, 2013 General Session

31A-21-504 Investigation -- Use of information used -- Disclosure.

- (1) An insurer may not ask an insured or applicant or use any other means to determine whether the insured or applicant is the subject of domestic abuse.
- (2) If an insured or applicant voluntarily discloses to the insurer or to the insured's or applicant's treating physician that the insured or applicant or a member of the insured's or applicant's household is the subject of domestic abuse, an insurer may not use the information of domestic violence or child abuse in violation of this part.

- (3)
- (a) An insurer may not disclose or transfer information to a third party relating to whether a specifically identifiable insured or applicant is the subject of domestic abuse unless the information:
 - (i) is required to be disclosed by the commissioner;
 - (ii) is required to be disclosed by a court of competent jurisdiction;
 - (iii) is necessary for the direct provision of health care services;
 - (iv) is permitted to be disclosed to an authorized agency under Chapter 31, Insurance Fraud Act;
 - (v) is required to be disclosed by abuse reporting laws; or
 - (vi) is authorized to be disclosed by the written consent of the individual who is the subject of domestic abuse, if that person is at least 18 years old.
 - (b) Subsection (3)(a) may not prevent an insured or applicant from obtaining the insured's or applicant's own medical or insurance records.
 - (c) Disclosure of information permitted under Subsection (3)(a) is subject to any state or federal law related to the confidentiality of medical information.
 - (d) For purposes of Subsection (3)(a), "third party" does not include an insurer's employees, agents, or contractors who are engaged in the insurer's necessary business operation.
- (4) This section may not be construed to prohibit an insurer from:
- (a) asking an applicant or insured about a medical condition, even if the condition is related to domestic violence or child abuse;
 - (b) using information obtained under Subsection (4)(a) for the purpose of actions or practices permitted under this part.

Enacted by Chapter 132, 1997 General Session

31A-21-505 Limit on liability.

An insurer that issues a life or accident and health insurance policy to an individual who is the subject of domestic abuse is not liable civilly or criminally for the death of or any injuries to the insured as a result of domestic violence or child abuse beyond the obligations of the insurer under:

- (1) the insurance policy; or
- (2) this title.

Amended by Chapter 116, 2001 General Session

31A-21-506 Enforcement -- Private rights.

- (1) An insurer that violates this part is subject to any penalty permitted under this title.
- (2) This part does not:
 - (a) create a private right of action for a violation of this part; or
 - (b) limit or impair the right of an individual to sue and recover damages from the insurer in a civil action for a cause of action that is not based on a violation of this part.

Enacted by Chapter 132, 1997 General Session